

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

THE BRADLEY CENTER, INC.¹

Employer

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 504, AFL-CIO, CLC

Cases 6-RC-12425 and
6-RC-12426

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTIONS

The Employer, The Bradley Center, Inc., operates residential treatment programs² in the greater Pittsburgh, Pennsylvania metropolitan area, where it employs about 390 professional and nonprofessional employees. The Petitioner, Service Employees International Union, Local 504, AFL-CIO, CLC, filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of teachers at the Employer's Mt. Lebanon, Pennsylvania facility and a separate unit of nonprofessional employees at the Employer's Mt. Lebanon, Pennsylvania facility. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following four issues:

- 1) Whether a single-facility unit is appropriate;
- 2) Whether the teachers share a distinct community of interest separate from the other professionals;

¹ The name of the Employer appears as amended at the hearing.

² As described more fully in the text below, the Employer also operates a foster care program.

3) Whether the medical records assistants and receptionists are office clerical employees;

4) Whether the Mobile Therapeutic Staff (MTS) employees are supervisors under Section 2(11) of the Act.

In Case 6-RC-12425, the Union seeks a unit consisting of all full-time and regular part-time teachers employed by the Employer at its Mt. Lebanon, Pennsylvania facility. The Employer disagrees as to both the scope and the composition of the petitioned-for unit, and contends that the only appropriate unit consists of all professional employees, including teachers, employed by the Employer at all four of its facilities in the greater Pittsburgh, Pennsylvania metropolitan area. In the alternative, the Employer contends the appropriate unit is all professionals at its Mt. Lebanon, Pennsylvania facility. The petitioned-for unit consists of approximately 11 teachers. The multi-facility unit of all professionals that the Employer contends is appropriate consists of approximately 90 employees.³

In Case 6-RC-12426, the Union seeks a unit consisting of all full-time and regular part-time nonprofessional employees employed by the Employer at its Mt. Lebanon, Pennsylvania facility. The Employer disagrees with the scope of the unit and the parties disagree as to the inclusion of certain classifications of employees. The Employer contends that the only appropriate unit consists of all nonprofessional employees at all of its facilities, and further contends that the medical records assistants and receptionists must be included in the unit since they are not office clerical employees, and that the MTS employees must be included in the unit since they are not supervisors. In the alternative, the Employer contends the appropriate unit is all nonprofessionals, including the three classifications named above, at its Mt. Lebanon, Pennsylvania facility. The petitioned-for unit consists of approximately 120

³ If the unit is restricted to Mt. Lebanon, the Employer's inclusion of other professionals with the petitioned-for teachers would comprise a unit of approximately 33 professional employees.

employees. The multi-facility unit of all nonprofessionals that the Employer contends is appropriate consists of approximately 300 employees.⁴

I have considered the evidence and the arguments presented by the parties on each of the four issues. As discussed below, I have concluded that the Employer has not rebutted the presumption that a single-facility unit is appropriate. I have also concluded that the teachers have a distinct community of interest separate from the other professionals. Further, I have concluded that the medical records assistants and the receptionists are not office clerical employees. Finally, I have determined that the Petitioner has not sustained its burden of establishing that the MTS employees are supervisors. Accordingly, I have directed an election in a single-facility unit of teachers that consists of approximately 11 employees, and I have directed a separate election in a single-facility unit of nonprofessionals, including medical records assistants, receptionists and MTS employees, that consists of approximately 132 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer, a nonprofit Pennsylvania corporation, is a social service agency operating residential treatment facilities, a residential treatment center, schools and a foster care program in the greater Pittsburgh metropolitan area focusing on children with behavioral health issues. Specifically, the Employer operates two residential treatment facilities with their associated schools, one at Mt. Lebanon and one at Robinson Township; one residential treatment center with its associated school at Indiana Township, which is referred to as the

⁴ If the unit is restricted to Mt. Lebanon, the Employer's inclusion of three other classifications with the petitioned-for nonprofessionals would comprise a unit of approximately 132 nonprofessional employees.

North campus; and a foster care program at Swissvale. The Employer employs a total workforce of about 500 employees.⁵

A. The Facilities

At its Mt. Lebanon campus, the Employer operates a 76-bed residential treatment facility and school, which opened in about October 2002. The campus consists of five main buildings, which includes two residential buildings and a building housing a school. The residents are housed in six units, each with a different population, such as low-functioning boys or hard-to-place girls. The total workforce at this campus is approximately 200.

At its Robinson Township campus, the Employer operates an 89-bed⁶ residential treatment facility and school, which opened on about February 2, 2005. This facility was formerly a nursing home, and the residential units, school, and offices are all located in one building. The residents are housed in eight units. When it opened this facility, the Employer moved 40 beds which were previously at its North campus to this location,⁷ and also moved 49 beds which were previously at its South campus to this location. The South campus had been located in North Strabane Township in Washington County, and that building is currently vacant and the Employer is attempting to sell it. Approximately 200 employees, total, work at the Robinson Township campus.

At its North campus, the Employer operates a 16-bed residential treatment center, which is also referred to as a group home, and a school. Also at this location are the Employer's general administrative offices. As a residential treatment center, the North campus serves a

⁵ Although this estimate of the total workforce at the Employer's various facilities above varies from the total calculated by adding the estimates at the various facilities as described below in Section I A, this variance is immaterial to the decisions reached herein.

⁶ The Robinson Township facility has a capacity for 104 residents.

⁷ Apparently as a result of this restructuring of the Employer's operations, the North campus currently has a number of administrative vacancies, which are noted in appropriate footnotes.

population with less severe behavioral problems than are served by the residential treatment facilities. Approximately 40 to 50 employees, total, work at this location.

At its Swissvale location, the Employer operates a foster care program. Unlike its other locations, the Swissvale location is not a residential program; rather, it involves the placement of children with foster families. There are approximately 11 to 12 families involved in the program. The foster care program is staffed with a program manager, an administrative assistant, and two treatment supervisors. The treatment supervisors do not supervise other employees; instead, they supervise the foster families.

The Employer's four facilities are located in the greater Pittsburgh metropolitan area. The approximate distances between the facilities are as follows: Mt. Lebanon to Robinson Township is about 9 miles, Mt. Lebanon to Swissvale is about 11 miles, Mt. Lebanon to the North campus is about 22 to 25 miles, the North campus to Swissvale is about 15 to 20 miles, and the North campus to Robinson Township is about 22 to 30 miles.

B. The Senior Administrative Leadership Team⁸

The Employer is governed by a Board of Trustees, and reporting to the Board is the Employer's Executive Director. Reporting to the Executive Director are the Employer's Chief Financial Officer (CFO) and Chief Operating Officer (COO). Among the management personnel reporting to the COO are the Coordinator of Quality Services, the Medical Director,⁹ the Administrator of Residential Services, the Administrator of Clinical Services, the Administrator of Community Services, the Administrator of Nursing Services, and the Administrator of Human Resources and Support Services. The COO and the senior managers who report to him also make up the Quality Council, which oversees the quality of all operations of the Employer, including the clinical programs.

⁸ The parties have stipulated, and I find, that all of the Employer's administrative hierarchy as described in Section I B, as well as Section II A of the text, possess the requisite indicia of supervisory status under the Act. The sole issue of supervisory status raised by these petitions is whether the MTS employees are supervisors.

⁹ Each campus, except Swissvale, has its own medical director, who reports to this position.

The Administrator of Residential Services is responsible for the implementation of uniform policies and procedures covering residential programming at the three residential campuses, as well as ensuring compliance with regulatory standards and guidelines. Reporting to the Administrator of Residential Services are the Directors of Residential Services at the Mt. Lebanon, Robinson Township and North campuses.¹⁰ These Directors are responsible for the day-to-day operation of residential programs at their respective campuses.

The Administrator of Clinical Services is responsible for overseeing the mental health services provided at the three residential facilities. Reporting to the Administrator of Clinical Services are the Directors of Clinical Services at each campus.¹¹ In addition, the Administrator of Clinical Services oversees the Director of Staff Training and Education and the Swissvale foster care program. The Administrator of Clinical Services also supervises the Director of Family Services/Clinical Supervisor at the Mt. Lebanon campus, who, inter alia, supervises some facility employees.

The Administrator of Nursing Services has overall responsibility for the quality and implementation of nursing services, and serves as the HIPAA compliance officer. Reporting to the Administrator of Nursing Services are the Coordinators of Nursing Services (RN Coordinators) at each residential campus¹² who supervise the nursing staff at that facility.

The Administrator of Community Services oversees the admissions department, serves as a liaison with referral sources, and addresses complaints related to resident care that arise at all locations. The Administrator of Community Services oversees the Director of Utilization and

¹⁰ The North campus position is currently vacant.

¹¹ Mt. Lebanon has one Director of Clinical Services, but is currently interviewing for a second Director; Robinson Township has three Directors; and the position at the North campus is currently vacant.

¹² There is one RN Coordinator at Mt. Lebanon, one at Robinson Township, and the position at the North campus is currently vacant.

Case Management who oversees the Quality Assurance/Utilization Review (QA/UR) employees and the case managers at all locations.

The Administrator of Human Resources and Support Services oversees all human resources functions and all non-clinical support services, including maintenance, housekeeping, dietary and information technology (IT).¹³ Reporting to the Administrator of Human Resources and Support Services are the Maintenance Supervisors at each residential campus, the Housekeeping Supervisors at each location,¹⁴ one Food Service Supervisor for all three locations,¹⁵ and one Systems Administrator responsible for the IT systems at all locations. Also reporting to the Administrator of Human Resources and Support Services is the Director of Human Resources (HR Director) who oversees the human resources functions at all facilities. The Human Resources department (HR department) is located at the North campus

The Employer has located its senior management personnel at its different residential campuses, in addition to its administrative offices at the North campus. Thus, the CEO, the Administrator of Community Services, and the Administrator of Human Resources and Support Services are located at the North campus. However, the COO maintains an office at the Mt. Lebanon campus as well as the North campus. Also at the Mt. Lebanon campus is the Administrator of Clinical Services. At the Robinson Township campus are the CFO, the Administrator of Residential Services, who also spends time at the other campuses, and the Administrator of Nursing Services.

II. THE MT. LEBANON FACILITY

As set forth above, the Petitioner seeks a unit of teachers at the Mt. Lebanon facility, and a separate unit of nonprofessionals at the Mt. Lebanon facility. Hence, I shall provide an

¹³ The Administrator of Human Resources and Support Services also chairs a safety committee made up of staff from the different campuses which meets on a monthly basis.

¹⁴ At Robinson Township, one person serves as both Maintenance and Housekeeping Supervisor.

¹⁵ The Food Service Supervisor travels to all three residential facilities.

overview of the operations at the Mt. Lebanon facility. However, the Robinson Township and North campuses are operated in a similar fashion.

A. Supervision

At the Mt. Lebanon campus, the Administrator of Clinical Services, as the highest ranking management person on-site, has been designated the site director or site administrator. The Employer explained that his role is to be a mentor to the campus directors; further, at recent employee meetings at Mt. Lebanon, he informed employees that he had an open-door policy and that they could come to him with any problems.

As noted, at Mt. Lebanon, the Employer operates a 79-bed residential treatment facility, and the residential programming at the Mt. Lebanon facility is under the direct supervision of the Director of Residential Services. Reporting to the Director of Residential Services at the Mt. Lebanon facility are the Program Coordinators who oversee six residential units.¹⁶ The Program Coordinators supervise about 93 Child Development Specialists (CDS), who make up the bulk of the Employer's nonprofessional workforce. The CDSs assist the children in a wide range of daily activities and attend school with them.

At the Mt. Lebanon facility, the CDSs work an 8-hour shift, eat with the residents and are paid for lunch.¹⁷ There is some variation in the starting and quitting time of CDS shifts at Mt. Lebanon: CDSs on some units work from 6:30 a.m. to 2:30 p.m., while CDSs on other units work from 6:00 a.m. to 2:00 p.m.

The educational programming at the Mt. Lebanon facility is under the direct supervision of a Coordinator of Educational Services (Education Coordinator), who reports to the Director of

¹⁶ Similarly, at the Robinson Township facility the residential units are overseen by Program Coordinators during the day and by Unit Managers during the evening, while at the North campus the units are overseen by Unit Managers. The difference between the Program Coordinators and the Unit Managers is their educational level; the Program Coordinators hold master's degrees and the Unit Managers hold bachelor's degrees.

¹⁷ At the North campus, CDSs work an 8 and ½ hour shift, and are not paid for lunch.

Residential Services.¹⁸ The Education Coordinator is responsible for the day-to-day operations of the school program and supervises ten special teachers, one resource teacher and two teacher assistants/CDSs.

The mental health services at the Mt. Lebanon campus are under the direct supervision of a Director of Clinical Services, who supervises 13 mental health therapists on the campus. The nursing services at the Mt. Lebanon campus are under the direct supervision of the RN Coordinator, who supervises four staff RNs, two nursing support specialists, and a medical transportation liaison.

At Mt. Lebanon, there is also a Director of Family Services/Clinical Supervisor who supervises five MTS employees and one athletic specialist.

There is also a Maintenance Supervisor who supervises seven maintenance assistants and a Housekeeping Supervisor who supervises six housekeeping/laundry employees. There are also six food service employees who report to a lead food service employee.

There are three case managers and two QA/UR employees who report to an off-site Director of Utilization and Case Management, three medical records assistants who report to an off-site Director of Medical Records, and four receptionists who report to the off-site Administrator of Human Resources and Support Services.

Finally, until January 2005, there was a Coordinator of Support Services at the Mt. Lebanon campus, who, among her other duties, dealt with employees to resolve payroll and leave issues. In that capacity, the Coordinator was apparently serving as a liaison between Mt. Lebanon employees and the HR department on the North campus. When the position is again filled, the Coordinator will only handle the support functions, such as petty cash, obtaining office supplies, and obtaining hygiene supplies for the residents, and the HR department will handle the human resources functions.

¹⁸ There is a similar Education Coordinator position at the Robinson Township and the North campuses, but the position at the North campus is currently vacant.

B. Treatment Provided

At the Mt. Lebanon facility, the treatment for each child is based on a treatment plan developed by an interdisciplinary team. This treatment team consists of mental health therapists, Program Coordinators, nurses, teachers, recreational therapists and case managers, with a psychiatrist as the treatment team leader. The various disciplines participate in the evaluation of the child on admission and the team develops a treatment plan based on the presenting problems.

As part of the treatment plan, the teachers develop an Individualized Educational Plan (IEP). This plan is audited by the Mt. Lebanon school district which can require that changes be made to it.

The treatment team meets at least monthly to review and, if necessary, modify the treatment plan, and also meets if there is a particular problem to address.¹⁹ Compliance with the treatment plan is monitored by the Program Coordinator, a case manager and the QA/UR employees.

Typically, a child remains at the Mt. Lebanon facility for about 8 to 12 months. At the end of this time, the treatment team develops a discharge plan. About a third of the children are discharged to some type of family setting, about a third go to a less restrictive residential setting, and about a third go to a more restrictive residential setting outside of Pennsylvania.

A child remains at the Mt. Lebanon facility for the entire course of treatment, and is only moved from one facility to another before discharge if there is a particular problem with the original placement, and depending on the funding source, the child may be treated as a new admission.

¹⁹ While teachers are supposed to participate in the treatment team meetings, this does not always occur.

C. School

At its Mt. Lebanon facility, the Employer operates a school which is licensed by the Commonwealth of Pennsylvania as a private school and must comply with federal and state laws governing schools. The school provides educational programming for its residents and also provides alternative educational programming for some non-residential students.

The Employer receives reimbursement from the student's home school district, which comes to the Employer through the Mt. Lebanon School District.²⁰ The Employer maintains a working relationship with the Mt. Lebanon School District, and teachers may have daily interactions with the District.

At its Mt. Lebanon school, the Employer has ten special education teachers, one resource teacher and two teacher assistants/CDSs. At the Mt. Lebanon school, there are two alternative classrooms, one for middle school students and one for high school students, who are not facility residents. The alternative classrooms operate with different schedules and different programming than the classrooms for the residential students. The Mt. Lebanon school follows the schedule of the Mt. Lebanon School District, and the teachers work the school day and have the summers off.

During the course of the school day the teachers may interact with other personnel. For example, therapists may come to the classroom to remove a child for a therapy session, and at this time there may be a brief discussion between the therapist and the teacher. If a child is acting out, teachers may be involved in therapeutic crisis intervention (TCI), along with other personnel. Specialized CDS personnel may be summoned, or a nurse may be summoned to observe and document the incident. If a child is acutely ill, teachers may interact with a nurse.

²⁰ The Robinson Township and North campuses are reimbursed by the local school districts in which they are located.

D. Interchange and Transfers

The Mt. Lebanon facility must maintain a specified ratio of CDS staff to residents. When CDS staffing drops below that level, the facility first attempts to obtain additional staffing within the facility, by soliciting volunteers or mandating employees to work overtime. When sufficient CDS staff cannot be obtained within Mt. Lebanon, the management personnel at Mt. Lebanon may contact the management personnel at another facility, who then solicit volunteers to work overtime shifts at Mt. Lebanon. Similarly, management at Mt. Lebanon may be asked by management at another facility to provide CDS staffing. Such cross-campus overtime is strictly on a voluntary basis; it is not required that CDSs work at another campus. RN staffing shortages are handled in a similar manner.

Interchange of teachers is extremely rare. While Mt. Lebanon teachers have worked extra shifts as CDSs, it appears that this has been limited to the Mt. Lebanon campus.

The number of shifts filled by CDSs and RNs from other campuses are as follows. At Mt. Lebanon, from October through December 2002, there were 8 CDS shifts and no RN shifts; in 2003, 112 CDS shifts and 36 RN shifts; in 2004, 94 CDS shifts and 6 RN shifts, and in 2005 until January 16, 2005, 12 CDS shifts and no RN shifts. At the South campus, in 2002, there were 87 CDS shifts and 6 RN shifts; in 2003, 87 CDS shifts and 27 RN shifts; in 2004, 90 CDS shifts and 13 RN shifts; and in 2005 until January 16, 2005, 9 CDS shifts and no RN shifts. At the North campus, in 2002, there were 26 CDS shifts and no RN shifts; in 2003, 3 CDS shifts and no RN shifts; in 2004, no CDS shifts and 4 RN shifts; and in 2005 until January 16, 2005, 3 CDS shifts and no RN shifts.

The number of shifts filled in this manner is a very small percentage of the total number of shifts. For example, at Mt. Lebanon there are over 21,600 CDS shifts per year. Further, the number of employees who worked at other campuses is less than the number of shifts, since some employees worked multiple shifts at other campuses. For example, at Mt. Lebanon in 2003, one RN filled all 36 RN shifts, and in 2002, two CDSs filled all 8 CDS shifts. The Employer's payroll representative who reviewed the records to determine the number of cross-

campus temporary transfers conceded that three employees possibly could have accounted for 116 to 118 of the total 226 CDS shifts worked at Mt. Lebanon between October 2002 and January 16, 2005.

In addition to the temporary interchange of employees between campuses set forth above, there have also been a very small number of permanent transfers between campuses, which includes both promotions and lateral transfers, involving both non-supervisory employees and supervisors. In 2002, there were 6 such promotions and 11 such transfers; in 2003, there were 10 such promotions and 18 such transfers; and in 2004, there were 4 such promotions and 9 such transfers.²¹ The record does not disclose the circumstances for the permanent transfers, but it is noted that a substantial number of the transfers involved transfers from other facilities to Mt. Lebanon in the year following the opening of the Mt. Lebanon facility in October 2002.

E. Hiring and Orientation

Applicants for employment at the Mt. Lebanon facility are for the most part interviewed by first line supervisors at the Mt. Lebanon campus, such as a Program Coordinator for a CDS applicant or the Education Coordinator for a teacher applicant.²²

At the conclusion of the interview, the supervisor makes a recommendation on hiring to the HR department. For CDS applicants, the Program Coordinators' recommendations are followed 85 to 90 percent of the time.²³ Although the interviewers have been directed not to convey their decision to the applicant, one Mt. Lebanon teacher testified that the Education Coordinator indicated to her that she had the job during her interview, and one Mt. Lebanon CDS testified that she was told that she was hired when she was interviewed.

²¹ Job vacancies for all positions at each campus, except CDS positions which are always available, are posted at all campuses.

²² During the last year, the Mt. Lebanon and Robinson Township Education Coordinators have jointly interviewed applicants for available positions at Mt. Lebanon and Robinson Township.

²³ The record does not reflect the percentage of time that interviewers' recommendations are followed for the other positions.

All new employees have an orientation period, which is three weeks long for clinical employees and a shorter period of time for non-clinical employees. The orientation for all new hires, regardless of the campus on which they will be working, is conducted at the Mt. Lebanon campus.

F. Evaluations

Employees are eligible for annual merit increases based upon their evaluations. Employees are supposed to be evaluated on their anniversary dates, but in practice it appears that this goal may not be met, and evaluations may be delayed.

The employee's supervisor evaluates the employee on a number of criteria, giving the employee a numerical score, which then determines the amount of the merit increase.²⁴ If an employee is at the top of the pay range, the employee receives a bonus instead, called a "lump sum distribution." After the evaluation is completed, upper management sign off on the evaluation, which is then forwarded to the HR department. The "vast majority" of times, the score the supervisor gives on the evaluation determines the employee's annual increase.

G. Discipline

Employees at Mt. Lebanon are subject to a progressive discipline policy. According to written policies, the first step is counseling and coaching by the supervisor, and the supervisor's documentation of this on a "Professional Development and Growth Form," which the supervisor retains.²⁵ The second step is the supervisor's issuance of a "Performance Consultation Form," which is forwarded to the HR department at the North campus and placed in the employee's personnel file. The third step is the issuance of a "Personnel Action Form," which is also forwarded to the HR department and retained in the personnel file. The Personnel Action Form has separate boxes for the specific level of discipline issued: written reprimand, demotion/freeze

²⁴ The possible increases are set by the Board of Directors.

²⁵ The HR Director testified that she does not consider these to be discipline.

level, transfer, suspension with pay or without pay, and termination. The involvement of the HR department in disciplinary matters is described below.

H. Grievances

Employees at the Mt. Lebanon campus can avail themselves of a formal complaint procedure. Any complaints involving basic work-related issues or day-to-day concerns, such as work assignments or requests for days off, are handled by the employee's immediate supervisor in the first instance. If the matter cannot be resolved on that level, it can go to the director to whom the supervisor reports, and at that point the HR department is usually involved.

In other instances, complaints may be addressed by senior management. For example, the teachers at Mt. Lebanon have complained to the Education Coordinator about a lack of textbooks which has required them to use copied materials. These complaints were also made to the Mt. Lebanon's Director of Residential Services, to whom the Education Coordinator reports. Most recently, they were made to the Administrator of Clinical Services as the site administrator at the Mt. Lebanon campus.

III. ADMINISTRATIVE SERVICES

In order to ensure the quality and consistency of its services, and to take advantage of the economies of scale, the Employer has centralized various services provided to its separate facilities. Those are discussed below.

A. Financial Services

The Employer derives its funding from three sources. It derives most of its revenue from Medicaid, which reimburses the Employer for the costs of providing services at the residential treatment facilities at Mt. Lebanon and Robinson Township. In addition, the Employer is reimbursed by Allegheny County for the costs of providing services at the residential treatment center at the North campus. Finally, about 13 to 14 percent of the Employer's funding comes from the local school district where the facility is located, being passed through the local school district from the child's home school district.

The CFO handles the negotiations with payors and the development of the Employer's budget. The reimbursement rates are facility-specific, and Mt. Lebanon has its own rate, which is different than the other campuses. There is one overall budget for the Employer, but each campus, including Mt. Lebanon, is shown on that budget as a cost center, which reflects the costs at that site.

Reporting to the CFO is the controller who is responsible for the day-to-day financial operations of the Employer, such as the accounts receivable and accounts payable, conducting financial audits, and negotiating some of the centralized contracts with vendors.

The Employer maintains a centralized time and attendance system. As part of this central system, at each campus the employees swipe their badges into a time clock to record their times.²⁶ The Employer also maintains a centralized payroll system, but distributes paychecks at each separate facility.

B. Quality Assurance Services

In order to fully participate in Medicaid, the Employer must be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and the Employer maintains one accreditation for its entire operation.²⁷ In addition, Pennsylvania has allowed different HMOs to manage its Medicaid dollars, and these HMOs have imposed their own requirements in addition to other governmental regulations.²⁸

The Coordinator of Quality Services is responsible for overall quality assurance and clinical audit functions. The Director of Utilization and Case Management is responsible for supervising the QA/UR employees who audit charts at each campus and the case managers who coordinate all aspects of care at each campus.

²⁶ All employees wear identification badges, which identify the campus at which they work.

²⁷ Each campus is not accredited separately.

²⁸ One example of an additional HMO requirement is more frequent interdisciplinary team meetings.

C. Admission Services

The process by which children are placed with the Employer begins with a referral by a county mental health system.²⁹ A packet of information on the child being referred is sent to the Employer's admissions department, located on the North campus. The admissions department decides whether to admit the child and where to place the child. The admissions department then forwards the information packet to the facility where the child is being placed.

D. Human Resources Services

All employees are subject to the Employer's standardized policies and procedures, which cover both human resources matters and clinical matters. The policies and procedures are contained in binders which employees are given during their orientation.³⁰ The Employer also has job descriptions which apply to all employees in a particular classification, regardless of the campus at which they work.

1. Hiring

The Employer's HR department tracks the staffing needs for CDS staff at each campus, and intends to implement a tracking system for other positions as well. The HR department handles all recruiting for the Employer, such as attending job fairs and placing newspaper ads.

Applicants, including those who appear at the facilities, are directed to send a resume and cover letter to the HR department.³¹ Upon receipt of resumes and cover letters, the HR department conducts pre-screening interviews by telephone for those applicants meeting the minimum requirements. For those applicants who are successfully pre-screened, an interview

²⁹ About 40 percent of the children have been adjudicated dependent by the Commonwealth of Pennsylvania and are in the custody of Children, Youth and Family Services.

³⁰ The written policies and procedures do not always accurately set forth the practice followed.

³¹ This process of having applicants who appear at facilities send a resume and cover letter to the North campus has been in place for four to five months; before that, walk-in applicants could fill out an application at the facility and the application was then forwarded to the HR department.

is arranged by the HR department, which is held at the campus where the job vacancy is located.

At the facility, the applicant completes an application and has an interview with the appropriate supervisor. If the interviewer recommends hiring the applicant, the HR department processes the paperwork necessary for child abuse clearances and criminal background checks and verifies references. If this process is not completed by the time a job offer is made, the offer is conditioned upon the background check.

The HR department determines the appropriate rate of pay based upon the applicant's education and experience, using a chart setting forth the starting wage ranges for the different positions. The applicant's file is then reviewed by the HR Director, who checks for such things as consistency between whether the applicant indicated that they had committed a crime and the criminal background check, whether the applicant has a valid driver's license, whether the applicant had been asked to resign or had been terminated from prior employment, and consistency between the resume and the employment record. The HR Director also reviews the interviewer's recommendation, and at times, has followed up with the interviewer. The HR Director makes the final decision based on her review of the written materials and sends out an offer.³² However, in making this determination, she does not independently interview the applicant, and does not independently conduct any further background investigation.

2. Wages and Benefit Administration

The Employer has a compensation schedule for all job classifications, which applies to all facilities, and this program is administered by the HR department. As noted, employees receive annual merit increases based on their evaluations. The evaluation is completed by the immediate supervisor, reviewed by the next level of management, and then forwarded to the HR department. The HR department then reviews the evaluation and verifies that the employee is

³² The Employer also conducts exit interviews when an employee resigns. Portions of the exit interview are conducted by the immediate supervisor and other portions are conducted by the HR department.

in compliance with training and checks the personnel file, which is kept at the North campus, for any disciplinary action.

All employees are eligible to receive the same benefit package, which includes paid time off (PTO), medical insurance coverage, dental insurance coverage, short-term disability, long-term disability, life insurance and tuition assistance. The Employer's HR department administers all of these programs.³³ In addition, the HR department processes incident reports when there are accidents and injuries³⁴ and handles workers compensation claims. It also handles other leave requests, such as FMLA, jury duty, military leave and personal leave.³⁵

During the orientation for new employees, representatives of the HR department make a presentation and employees complete various HR forms.

The Employer also sponsors some employee events for all employees, such as a holiday party and golf outings, as well as programs which are facility-specific, such as employee recognition programs.

3. Discipline

The HR Director is involved in all attendance discipline and all suspensions and terminations. The HR Director may also be involved in the issuance of other written warnings. It appears that this involvement consists of recommending the level of discipline based on the facts the immediate supervisor presents, and drafting the discipline, in at least those situations where the discipline is dependent on information contained in the personnel files, such as attendance records. There is no indication that the HR Director conducts any independent investigation of the incident.

³³ An employee's supervisor must recommend the employee for tuition assistance.

³⁴ Part of the incident report is completed by the employee and part is completed by the employee's immediate supervisor.

³⁵ Many of the forms that are used by employees and supervisors for human resources matters, such as leave requests, are kept at the facilities.

4. Grievances

The HR department handles any employee complaints involving sexual harassment, workplace harassment, unresolved payroll issues, or appeals from discipline.

E. Training Services

The Employer's training department conducts the orientation for new employees and also provides assistance to new hires for the first 90 to 120 days of their employment. In addition, the training department provides required periodic training on matters such as therapeutic crisis intervention (TCI), CPR and universal precautions. Some of this training is conducted for all campuses at the Mt. Lebanon facility, and some is conducted at the different facilities. The Employer also conducts periodic multi-facility in-services for its teachers.

The scheduling for employees to attend training is handled by the campus on which the employee works, and requires the approval of the employee's supervisor. The training department maintains the records of all employees' training to ensure that all employees have satisfied the training requirements.

IV. SCOPE OF THE UNITS

While the Petitioner has sought a unit of teachers limited to the Mt. Lebanon facility and a unit of nonprofessional employees limited to the Mt. Lebanon facility, the Employer asserts that the scope of the appropriate units must include all of its facilities.

A. Controlling Precedent

It is well established that a petitioned-for single-facility unit is presumptively appropriate. Manor Healthcare Corp., 285 NLRB 224 (1987). The presumption is, however, rebuttable upon a showing that the single facility has so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. Rental Uniform Service, 330 NLRB 334, 335 (1999). The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. However, the Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence . . . illustrating the complete submersion of the interests of employees at the single [facility],' nor is it necessary to

show that 'the separate interests' of the employees sought have been 'obliterated.' " Trane, 339 NLRB 866, 867 (2003), quoting Petrie Stores Corp., 266 NLRB 75, 76 (1983).

To determine whether the single-facility presumption has been rebutted, the Board looks at such factors as the centralized control over daily operations and labor relations; extent of autonomy of the local management to handle the facility's day-to-day ordinary operations and to supervise the employees' day-to-day work; similarity of employee skills, functions and working conditions; extent of employee interchange; geographic proximity; and bargaining history, if any. Rental Uniform Service, supra at 335.

B. Analysis

Applying the controlling precedent to the facts herein, I conclude that the Mt. Lebanon facility has a distinct identity separate from the Employer's other campuses.

The overwhelming majority of the employees at the Mt. Lebanon campus are directly supervised by an on-site supervisor who directs their day-to-day activities. Specifically, the 11 teachers and two teacher assistants/CDSs report to the on-site Education Coordinator, the 13 mental health therapists report to the on-site Director of Clinical Services, the four nurses, two nursing support specialists and medical transportation liaison report to the on-site RN Coordinator. Similarly, the 93 CDSs report to Program Coordinators, the seven maintenance assistants report to the Maintenance Supervisor, the six housekeeping/laundry employees report to the Housekeeping Supervisor, and the six food service specialists report to the lead food service employee. In addition, the five MTS employees and athletic specialist report to the Director of Family Services/Clinical Supervisor. Further, the teachers and the CDSs have two levels of supervision on-site, since the Education Coordinators and the Program Coordinators both report to the on-site Director of Residential Services.

In contrast, there are only 12 employees at the Mt. Lebanon facility who do not have on-site supervision: the two QA/UR employees, three case managers, three medical records assistants, and four receptionists.

The programming at the Mt. Lebanon campus is completely determined by the treatment plans developed for the children who reside there. These treatment plans are developed solely by the staff at the Mt. Lebanon facility solely for the benefit of the children at the facility. The children remain at the Mt. Lebanon facility, absent unusual circumstances, from the time of their admission to the time they are discharged. That is, the children do not progress from one facility to another.

Employees hired to work at the Mt. Lebanon facility are interviewed there, usually by the immediate supervisors, who make recommendations on hiring. Generally, the interviewers' recommendations on hiring are followed, and it appears that in the limited instances where the recommendation is not followed by the HR department, the determination not to hire an applicant is based on objective information disclosed during the background check or a review of the file. Thus, the discretionary element of the hiring process occurs at the Mt. Lebanon

Newly hired Mt. Lebanon staff receive their orientation at the Mt. Lebanon facility. The overwhelming majority of employees hired to work at the Mt. Lebanon facility work only at the Mt. Lebanon campus, and no Mt. Lebanon employee is ever required to work at another campus. As a practical matter the employees at Mt. Lebanon have extremely few opportunities to be in contact with other employees. Opportunities for such contact are not part of the regular workday and are restricted to meetings of the safety committee, some training sessions, and some social events. Employees at the Mt. Lebanon campus swipe their badge into a time clock on campus and receive their paychecks on campus.

The Mt. Lebanon employees are evaluated by their immediate supervisors, who, as noted, are most often located on the Mt. Lebanon campus. This evaluation is determinative of the amount of their annual increase in the "vast majority" of cases. The Mt. Lebanon employees receive various disciplinary notices issued by their immediate supervisors, regardless of whether the supervisor consulted with the HR department. If employees have complaints about basic work-related issues, the employees go to their immediate supervisors who attempt to resolve them.

The Board has recognized that centralized control over personnel and labor relations matters alone is not sufficient to rebut the single-facility presumption where the evidence demonstrates significant local autonomy over labor relations. New Britain Transportation Co., 330 NLRB 397 (1999). In New Britain Transportation Co., the employer operated three bus transportation facilities, and the petitioner sought to represent a unit of drivers and monitors at one facility. The Board found that the employer failed to rebut the single-facility presumption, even though the employer had centralized control over personnel and labor relations policies, including accounting, recordkeeping, payroll, and wages and benefits, and over such matters as formal discipline, new-hire training, and safety training. The Board found that the local facility personnel had an important role in performing labor relations functions.

Numerous other Board cases have reached the same conclusion: e.g. Cargill, Inc., 336 NLRB 1114 (2001) (single-facility unit found appropriate even though employer had centralized control over administrative and labor relations policies); Rental Uniform Service, supra at 335 (single-facility unit found appropriate even though employer maintained centralized control of aspects of labor relations, and there was administrative and operational integration between facilities and similarity of job functions, skills and pay); Esco Corp., 298 NLRB 837, 838-840 (1990) (single-facility presumption stood unrebutted based in part on existence of non-supervisory leadman's presence providing "limited local autonomy" at petitioned-for facility); Carter Hawley Hale Stores, 273 NLRB 621, 623 (1984) (two single-facility units found appropriate despite the fact that one management official made final decisions on hiring, firing, transfers and promotions at 21 beauty salons).

Further, numerous Board cases have found a multi-facility unit appropriate where there is a lack of local autonomy: e.g. Trane, supra at 868 (multi-facility unit found appropriate where, inter alia, complete absence of on-site management or supervision caused lack of even "limited local autonomy"); Budget Rent A Car Systems, 337 NLRB 884, 885 (2002) (multi-facility unit appropriate where, inter alia, there is no separate local management); Waste Management Northwest, 331 NLRB 309 (2000) (same).

In this case, notwithstanding the Employer's centralization of various administrative and human resource functions, the Mt. Lebanon supervisors have substantial control over the day-to-day operations of the Mt. Lebanon campus, and substantial input in labor relations matters.

Further, not only does the Mt. Lebanon facility have substantial local autonomy, but also there is negligible inter-facility employee interchange or contact. In this regard, in its attempt to meet its burden to rebut the presumptive appropriateness of the Mt. Lebanon units, the Employer offered evidence of CDSs and RNs working overtime at other campuses to cover for staff shortages. This evidence, however, was presented in terms of the number of shifts, rather than the percentage of total shifts or the actual number of employees who worked at different campuses. Faced with similar evidence of numbers of instances of temporary interchange in New Britain Transportation Co., supra at 398, the Board stated that the evidence was of "little evidentiary value" because the employer did not present evidence on the percentage of total number of routes involving temporary interchange or the percentage of employees involved in temporary interchange.

Even assuming that the evidence of temporary interchange in this case meets the caliber required under New Britain Transportation, evidence elicited by the Petitioner on cross-examination disclosed that the number of shifts worked was negligible in comparison to the total number of available shifts, and that the number of employees involved was also negligible. Thus, the record reflects that on an annual basis there were approximately 21,600 CDS shifts at Mt. Lebanon. Of these 21,600 CDS shifts, in 2003, only 112 shifts were filled by employees from another campus; and in 2004, only 94 shifts were so filled. In addition, the total number of employees who worked cross-campus is less than the number of shifts, since employees worked more than one shift. Indeed, one RN filled 36 shifts and the Employer acknowledged that three CDSs may have filled 116 to 118 shifts.

Further, all of these temporary transfers were on a voluntary basis. Voluntary interchange is given less weight in determining if employees from different locations share a common identity. New Britain Transportation Co., supra at 398. See also Budget Rent A Car

Systems, supra at 885, noting that although transfers had been voluntary, the manager had authority to mandate transfers.

In addition, the Employer's evidence of permanent transfers and promotions is likewise deficient. To rebut the presumptive appropriateness of the Mt. Lebanon units, the Employer introduced evidence of permanent transfer and promotions among the facilities. However, this evidence included transfers and promotions involving supervisory personnel as well as non-supervisory personnel. In Carter Hawley Hale Stores, supra at 623, the Board noted that the evidence of temporary transfers among non-unit employees did not destroy the status of separate facilities as "identifiable units."³⁶

Moreover, even including supervisory personnel in the permanent transfers and promotions, the number of such transfers and promotions was negligible. The Employer's total workforce was estimated at approximately 450-500 employees, and there were only 17 permanent transfers in 2002; 18 in 2003, and 13 in 2004.

Finally, there are few opportunities for inter-facility contact among employees, such contact being limited to orientation, some training sessions, or a few annual events.

In finding that an employer has not rebutted that single-facility presumption, the Board has frequently noted the absence of significant interchange. See e.g. Cargill, Inc. supra at 1114 (13-14 instances of interchange among a total of 23 employees in two facilities in eight month period found neither regular nor substantial); Rental Uniform Service, supra at 336 (similarity of skills, pay and job functions do not establish lack of separate identity where there is no significant interchange and work interaction); Carter Hawley Hale Stores, supra at 623 (not enough interchange of employees to destroy status as identifiable units).

Conversely, in finding that the employer has rebutted the presumption, the Board has frequently noted the presence of significant interchange. See e.g. Trane, supra at 867

³⁶ But see, St. Luke's Health System, Inc., 340 NLRB No. 139 (2003), which focused on all transfers, but did not discuss Carter Hawley Hale Stores.

(crossovers between two facilities happen "hundreds of times a year"); Budget Rent A Car Systems, supra at 885 (significant amount of employee contact among facilities); Neodata Product Distribution, 312 NLRB 987 (1993) (regular and frequent contact); Dayton Transport Corp., 270 NLRB 1114 (1984) (400 to 425 instances of interchange in one year).

Dattco, Inc., 338 NLRB 49 (2002), relied upon by the Employer, is distinguishable. In Dattco, the employer operated nine bus terminals in Connecticut. The Board rejected a contention that a unit of drivers and monitors at one facility was appropriate. In so finding, the Board distinguished two prior decisions involving the same employer, which held that single-facility units at two other terminals were appropriate.

In distinguishing the earlier Dattco cases, the Board noted that in the earlier cases the terminal managers and dispatchers exercised a high degree of autonomy over day-to-day operations, including assignment, dispatch and minor discipline, and there was only minimal interchange of drivers between the facilities in issue and the other terminals. In contrast, the Board found that in the case before it, the terminal manager had much less authority over drivers and the employee interchange was substantial. Specifically, the Board found that one-third of the employees were shuttled to other terminals daily to service routes at those terminals. Further, they were then supervised by the managers at the other terminals.

Manifestly, the factors relied upon by the Board in distinguishing the case before it in Dattco from the prior decisions, i.e. the substantial interchange of employees and the lack of local autonomy, stand in sharp contrast to the present case. Here, there is substantial local autonomy and an absence of more than negligible interchange.³⁷

In addition, the Board's recent decision in St. Luke's Health System, Inc., 340 NLRB No. 139 (2003) is also distinguishable. In that case, the employer operated, inter alia, an acute care hospital and a nursing home, and 21 outpatient clinics providing service in the following areas:

³⁷ Other cases cited by the Employer, namely Bashas' Inc., 337 NLRB 710 (2002), Alamo Rent-A-Car, 330 NLRB 897 (2000) and Acme Markets, Inc., 328 NLRB 1208 (1999), are inapposite since they do not deal with the single-facility presumption, which is at heart of this case.

family practice, rehabilitation and specialty areas. The petitioner had sought to represent a professional unit at one of the employer's clinics, but the Board found that the employer had rebutted the single-facility presumption. In contrast to St. Luke's, where approximately 15 to 20 percent of the employees were temporarily assigned to other facilities, including nurses who floated to other clinics, there is negligible interchange in this case. Further, in St. Luke's, unlike the present case, the employer demonstrated that patients were able to transition out of acute care and receive a full range of health-care services at the employer's clinics. In contrast, in the present case, children are placed in one residential facility and remain there for the entire duration of their treatment and then are discharged. Finally, in St. Luke's, the employer's HR department "independently investigat[ed]" disciplinary incidents leading to suspensions and terminations, while in the present case the HR department is merely consulted for such incidents.

In a broader sense, St. Luke's is also quite different from the present case since in St. Luke's each clinic had only a very small number of employees whereas here each facility has a much larger number of employees. Specifically, in St. Luke's the petitioned-for single-facility unit had only 12 employees, and all 21 clinics had a total of 121 such employees, or an average of six employees. Here, in contrast, Mt. Lebanon has 93 CDSs, and a total of 132 nonprofessional employees. Simply by virtue of the size of the Employer's Mt. Lebanon facility, it is not surprising that there is substantial on-site supervision and local autonomy.³⁸

Accordingly, based on the above and the record as a whole, I find that the Employer has not rebutted the single-facility presumption.

V. APPROPRIATENESS OF THE PETITIONED-FOR TEACHER UNIT

While the Petitioner has sought a unit of teachers, the Employer contends that the appropriate unit must include all professional employees. The Employer would include eight

³⁸ There is no history of collective bargaining at the Employer. The distances between the facilities do not tend to favor the position of either party.

other professional classifications with the petitioned-for special education teachers and resource teachers. Each of these professional classifications is described below.

Specifically, the Employer employs 24 special education teachers, ten of whom work at its Mt. Lebanon facility, and are classroom teachers. In addition, the Employer employs three resource teachers, one of whom works at Mt. Lebanon, who are responsible for performing standardized assessments of students and developing comprehensive evaluation reports. The teachers must be licensed and certified in special education by the Commonwealth of Pennsylvania. No other professionals, except the RNs, must be licensed or certified. Teachers are salaried employees.

The Employer employs 25 mental health therapists, 13 of whom work at Mt. Lebanon. They provide individual, family and group therapy as indicated by the treatment plans. Mental health therapists should possess master's degrees and are salaried. Further, the Employer employs two recreation therapists.

There are 22 RNs working for the Employer, including four at Mt. Lebanon. The RNs deal with medical and psychiatric issues, the administration of medication, and the observation and documentation of restrictive procedures. The RNs work 24 hours a day, 7 days a week. They are paid hourly.

The Employer has three professional positions in its admissions department located at the North campus, two admissions case managers and one admissions clinical coordinator. The admission case managers are responsible for the functioning of the admissions process. They receive and process the information packets on children who are referred to the Employer. The admissions clinical coordinator is an RN who reviews the information packets received, ensures that the admissions criteria are met, ensures that the clinical information can be verified, and decides the location for placement. The admissions case managers are salaried, and the admissions clinical coordinator, like the Employer's other RNs, is paid hourly. The admissions case managers should possess bachelor's degrees.

The Employer has seven case managers, which includes three at Mt. Lebanon, who are responsible for coordinating all aspects of care, including discharge planning, court appearances and communications between the Employer and the referral sources, HMOs and families. The case managers should possess a bachelor's degree and are salaried.

The Employer employs three QA/UR employees, two of whom work at Mt. Lebanon, who audit charts to ensure compliance with treatment plan timelines and compliance with HMOs and Medicaid in terms of documentation. The QA/UR employees should possess a bachelor's degree and are salaried.

Finally, the Employer employs one risk management and compliance auditor.

Although the job descriptions for the admissions case managers, case managers, and QA/UR employees state that a bachelor's degree is required, the Employer has indicated that because of the job market, the Employer will accept non-degreed applicants.

A. Controlling Precedent

It is well settled that the Act requires only that a bargaining unit be an appropriate unit, not the only appropriate unit or even the most appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996). In defining an appropriate bargaining unit, the key question is whether the employees share a sufficient community of interest. The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the analysis ends. Barron Heating & Air Conditioning, 343 NLRB No. 58, slip op. at 3 (2004), citing Bartlett Collins Co., 334 NLRB 484 (2001).

B. Analysis

As a result of the Employer's centralization of operations, the teachers share many similarities in their employment with other professionals. However, there are some striking differences in their terms and conditions of employment. First, the teachers are supervised by the Education Coordinators, while no other professional employees report to the Education Coordinators. Second, the teachers must possess a bachelor's degree and be licensed by the Commonwealth of Pennsylvania, and no other professional employees must meet both

criteria.³⁹ Third, the teachers' hours correspond to a school day and they do not work during school vacations and summers, while all other professionals work during school vacations and summers and many professionals provide coverage 24 hours a day, 7 days a week. Fourth, the teachers interact on a regular basis with local school districts, and no other employees have such interaction. This is particularly significant in that the teachers, in conjunction with the local school districts, draft the IEPs for the students, which define the programming the students receive in school. In contrast, the other professionals' interaction with the residents is not based on any direction received from an outside source. Fifth, only teachers attend periodic education in-services, and only teachers face certain situations unique to the classroom, such as the absence of textbooks. Sixth, the teachers work in a schoolroom setting which is separate from the residential settings where the children live; no other professionals regularly work in the classroom setting. Seventh, some teachers work with students who are not residents at the facility, while no other professionals work with children who are not residents.

Contrary to the Employer's assertions, Upstate Home for Children, 309 NLRB 986 (1992), does not compel the inclusion of other professionals in a unit of teachers. In Upstate Home, the Board was faced with petitions to represent separate units of RNs and LPNs in a residential facility for mentally retarded children. There are substantial similarities between the employer in Upstate Home and the Employer here, including the fact that in Upstate Home, as here, the employer used a multi-disciplinary team approach. However, the Board's inclusion of other staff with the nurses was not based solely on their interactions as part of a multi-disciplinary team. Rather, the Board examined all of the pertinent community of interest factors and based its decision thereon. Significantly, several important factors that led the Board to find the nurses did not possess a distinct community of interest in Upstate Home are not present here.

³⁹ The RNs must possess a two-year degree and be licensed. The mental health therapists must have master's degrees, but do not have licensing requirements.

Specifically, the nurses in Upstate Home were not separately supervised, but instead reported to the same supervisor as the teachers, which is different from the teachers in this case who report to the respective Education Coordinator. The nurses in Upstate Home shared some nursing functions with other staff who dispensed medications and administered treatments, and could perform tube feedings and catherizations, which is unlike the teachers in this case who are the only professionals involved in education programming. Further, the nurses in Upstate Home did not work in a specialized setting, unlike the teachers here who work in a classroom. Furthermore, the nurses in Upstate Home were found to be in "close contact" with other staff while the teachers in this case spend their days in the classroom and, accordingly, do not have the opportunity for significant contact with other professional staff. Finally, the nurses in Upstate Home did not work in conjunction with an outside entity and did not treat children who were not residents of the facility, unlike the teachers here who work with local school districts and teach students who do not reside at the facility.

Based on the above, and the record as a whole, I find that the teachers have a distinct community of interest separate from the other professional employees and constitute an appropriate unit for the purposes of collective bargaining.

VI. ELIGIBILITY OF CERTAIN NONPROFESSIONAL EMPLOYEES

With respect to the petitioned-for unit of nonprofessional employees, the parties disagree over the eligibility of three classifications of employees: the medical records assistants, the receptionists, and the MTS employees. The Union contends, contrary to the Employer, that the medical records assistants and receptionists are office clerical employees who must be excluded from the unit. Further, the Union contends, contrary to the Employer, that the MTS employees are supervisors under the Act who must be excluded from the nonprofessional unit.

A. Medical Records Assistants and Receptionists

The Employer employs six medical records assistants, three of whom work at the Mt. Lebanon campus. Each campus has its own medical records staff and these medical records assistants are responsible for maintaining the medical records for the residents at the campus

where they work. In order to obtain missing data, they may be in contact with the professional and nonprofessional staff. The medical records assistants report to a Director of Medical Records who reports to the Administrator of Nursing Services.

In support of their positions, the parties compared the functions of the medical records assistants to the medical secretaries, whom the parties agreed are office clerical employees.⁴⁰ The medical secretaries verify insurance coverage to ensure that there is no secondary coverage and perform clerical functions for the nursing department.

The Employer employs 13 receptionists, four of whom work at the Mt. Lebanon campus. The receptionists are responsible for receiving telephone calls and forwarding them to the appropriate persons, for greeting visitors, for monitoring the fax machine and notifying personnel of the receipt of faxes, for distributing mail, for distributing van keys and logging the use of vans, for scheduling meeting rooms, and for handling the booking and scheduling the cleaning of the family apartment.

In cases arising in the healthcare field, the Board has distinguished between business office clericals and employees performing certain other clerical functions, consistently including the latter in service and maintenance units in hospitals where they have contact with the service and maintenance unit. Lincoln Park Nursing Home, 318 NLRB 1160, 1164 (1995), citing: Rhode Island Hospital, 313 NLRB 343, 359 (1993); Mercy Hospitals of Sacramento, 217 NLRB 765, 770 (1975); St. Luke's Episcopal Hospital, 222 NLRB 674, 676 (1976); and Duke University, 226 NLRB 470, 470-471 (1976).

Further, in the Board's rulemaking proceedings, the Board has also recognized the distinction between business office clericals and other types of clericals. The Board noted that business office clericals perform distinct functions: handling finances and billing, and dealing

⁴⁰ Inasmuch as the parties have agreed that the medical secretaries are excluded from a nonprofessional unit in that they are office clerical employees, and the duties of that position were therefore not fully developed at the hearing, I express no opinion on whether the medical secretaries are office clericals.

with Medicare, Medicaid and other reimbursement systems. They are generally supervised separately in business office clerical departments; this separation has resulted from the almost universal centralization of business office functions. Further, business office clericals have little interaction with other nonprofessionals as the business office clerical offices are often physically isolated. Lincoln Park Nursing Home, supra at 1164, citing Rhode Island Hospital, supra at 359.

Applying these principles to the Employer, it is evident that none of the employees at issue herein perform work associated with business office clericals, such as handling finances and billing, and dealing with Medicaid and other reimbursement systems. They are not physically isolated in offices processing accounts receivable and accounts payable under the direction of the controller. Therefore, I shall include them in the nonprofessional unit found appropriate herein. See Lincoln Park Nursing Home, supra; Charter Hospital of Orlando South, 313 NLRB 951 (1994) (receptionists included in nonprofessional unit excluding business office clericals).

B. MTS Employees

The Employer employs 11 Mobile Therapeutic Staff (MTS) employees, including five who work at Mt. Lebanon. These employees are Senior CDSs and their primary function is to respond to crisis situations either by directly intervening with the child or by maintaining the stability of the unit while other staff deal with the crisis. They are considered mobile in the sense that they are not assigned to a specific unit. At times, they counsel and make suggestions to CDSs, particularly in crisis situations. They are also responsible for ensuring adequate staffing on the off-shifts if the Program Coordinators are not present. They work between 1 p.m. and 11 p.m. on weekdays and between 7 a.m. and 11 p.m. on weekends.

In the absence of Program Coordinators, CDSs call off to MTSSs, who then obtain coverage. The MTSSs first solicit volunteers and if there are no volunteers, they can mandate someone to stay. The MTSSs also seek volunteers to work on different units to address short-staffing or other special needs, and can mandate employees to do so. The MTSSs have also

directed CDSs to stay with a child, and not to take a child off-campus if it would cause short-staffing.

The Employer does not have any written policy on the process used to solicit volunteers or to select employees to mandate. According to the Employer's HR Director, if there are not volunteers, the MTSs are required to obtain the approval of a Program Coordinator or an on-call supervisor before mandating overtime, but she conceded that this may not always occur in practice.

The Act expressly defines the term "supervisor" in Section 2(11), which provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The Board has long recognized that not every assignment or direction of work establishes supervisory authority; rather the assignment and direction, like the other supervisory indicia, must be done with independent judgment before it is considered to be supervisory under the Act. KGW-TV, 329 NLRB 378, 381 (1999). Similarly, even the exercise of substantial and significant judgment by employees in instructing other employees based on their own training, experience and expertise does not confer supervisory status. KGW-TV, supra.

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory

status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Williamette Industries, 336 NLRB 743 (2001); Michigan Masonic Home, supra at 1409.

In asserting that the MTSS are supervisors within the meaning of the Act, the Petitioner relies on assignment and direction of work, counseling and mandating overtime.⁴¹ As the party asserting supervisory status in this matter, the Petitioner has the burden of proof on this issue.

The record evidence discloses that as Senior CDSs, MTSS are expected to use their experience to provide guidance to the other CDSs. Further, inasmuch as MTSS are specifically charged with handling TCIs on a campus-wide basis, they are expected to take the lead role in a crisis situation and guide other staff. The guidance and direction thus provided by MTSS is a function of their experience and skills.

MTSS are also responsible for ensuring adequate staffing. However, this does not involve the use of independent judgment in that there are staffing ratios which must be met. As to soliciting volunteers to work overtime, or to switch units, this does not appear to involve the use of independent judgment; rather, the selection of the CDS is merely a matter of which CDS volunteers. With respect to mandating overtime, or mandating a unit switch, the record evidence does not show the frequency with which this occurs; whether an admitted supervisor is contacted; or, if an admitted supervisor is not contacted, the frequency with which this occurs. In these circumstances, it cannot be concluded that the Petitioner met its burden to establish

⁴¹ The Petitioner does not contend that the MTSS hire, transfer, suspend, lay off, recall, promote, discharge, discipline other employees, or adjust their grievances, or effectively recommend such action. In its brief, the Petitioner characterizes the mandating of overtime as a reward, although it would seem that the employees mandated might not consider it as a reward, since they did not initially volunteer for the overtime.

that the MTSS exercise independent judgment in mandating overtime, or that they otherwise possess and exercise supervisory indicia within the meaning of the Act.

Accordingly, on this record, I find that the Petitioner has not sustained its burden of proving that the MTSS are supervisors under the Act. Therefore, I shall include them in the nonprofessional unit found appropriate herein.

VII. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

In Case 6-RC-12425:

All full-time and regular part-time special education teachers and resource teachers employed by the Employer at its Mt. Lebanon, Pennsylvania facility; excluding all office clerical employees, managers, confidential employees and guards, other professional employees and supervisors as defined in the Act, and all other employees.

In Case 6-RC-12426:

All full-time and regular part-time nonprofessional employees, including athletic specialists, child development specialists (CDS), food service specialists, housekeeper/laundry, lead food service, lead housekeeper, maintenance assistants, medical records assistants, medical transporter liaison, MTS/Senior CDS, nursing support specialists, receptionists, Senior CDS, and teacher assistants/CDS, employed by the Employer at its Mt. Lebanon, Pennsylvania, facility; excluding all office clerical employees, managers, confidential employees and guards, professional employees and supervisors as defined in the Act.

VIII. DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 504, AFL-CIO, CLC. The date, time and place of the elections will be specified in the Notices of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the elections are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date;

and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to the lists of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make them available to all parties to the elections.

To be timely filed, the lists must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **April 15, 2005**. No extension of time to file these lists will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the elections whenever proper objections are filed. The lists may be submitted by facsimile transmission at 412/395-5986. Since the lists will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the elections. Failure to follow the posting requirement may result in additional litigation if proper objections to the elections are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

IX. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **April 22, 2005**. The request may **not** be filed by facsimile.

Dated: April 8, 2005

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

Classification Index

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